

August 16, 2005

JESSICA KIRBY
555 W 8TH ST STE 516
VANCOUVER WA 98660

Subject: Complaint Filed Against Tom Mielke – PDC Case No. 06-003

Dear Ms. Kirby:

The Public Disclosure Commission staff has completed its investigation of your complaint received on July 18, 2005, alleging that Tom Mielke, a candidate for Clark County Commissioner, sponsored political advertising that falsely implied that he was the incumbent office holder, when in fact he was not, in violation of RCW 42.17.530.

The PDC staff reviewed your allegations in light of the following statute:

RCW 42.17.530(1)(b) prohibits a person from sponsoring with actual malice political advertising that makes either directly or indirectly, a claim or implication that the candidate is the incumbent, when in the fact the candidate is not the incumbent officeholder. “Actual malice” means to act with knowledge of falsity or with reckless disregard as to truth or falsity. Any violation must be proven by clear and convincing evidence.

Specifically, you alleged that Mr. Mielke’s campaign produced political advertising in the form of campaign literature and statements on his campaign web site that falsely represented that Mr. Mielke was the incumbent Clark County Commissioner because the advertising did not state that he was seeking the office of County Commissioner, an alleged violation of RCW 42.17.530.

We found that:

- On March 24, 2005, Tom Mielke filed a Candidate Registration Statement (PDC Form C-1) declaring his candidacy for Clark County Commissioner for the 2005 election cycle.
- Mr. Mielke stated that he produced 500 flyers that were mailed out prior to his campaign discovering that the flyer failed to indicate that he was seeking the office of Clark County Commissioner.

- Mr. Mielke said that he caught the mistake after the mailing, and that the campaign ordered a stamp to correct the problem on the remaining flyers with regard to the false claim of incumbency.
- Mr. Mielke stated that the campaign took corrective action and stamped the word “elect” next to Tom Mielke’s name on the remaining flyers prior to them being distributed.
- Mr. Mielke stated the campaign also took corrective action on the campaign website to include the word “Elect” and by increasing the font size of the sponsor identification.

On July 13, 2005, PDC staff sent Mr. Mielke a warning letter concerning this issue. In accordance with Public Disclosure Commission practice, if Mr. Mielke fails to comply with RCW 42.17.530 after receiving the warning letter with regard to the false claim of incumbency on future campaign flyers or other forms of political advertising, he may be subject to enforcement action.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against Tom Mielke.

If you have any questions, please contact Phil Stutzman at (360) 664-8853 or toll-free at 1-877-601-2828, or by e-mail at pstutzman@pdc.wa.gov.

Sincerely,

Vicki Rippie
Executive Director

C: Tom Mielke Campaign